July 30, 2020

Mr. Joe Canary
Director
Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655 U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Submitted Electronically Through www.regulations.gov

Re: Notice of Proposed Rulemaking: Financial Factors in Selecting Plan Investments Proposed Regulation (RIN 1210-AB95)

Dear Director Canary:

On behalf of the National Roofing Industry Pension Plan ("NRIPP"), thank you for the opportunity to submit comments on the notice of proposed rulemaking entitled "Financial Factors in Selecting Plan Investments" ("Proposal" or "NPR"). NRIPP is a multiemployer pension fund that has a multi-decades track record of successfully investing in what is often referred to as "Economically Targeted Investments" ("ETIs") that provide competitive risk-adjusted returns through investments that contribute to a well-diversified portfolio, as well as provide collateral benefits such as plan contributions, for the exclusive purpose of providing benefits and solely in the interest of the plan, participants and beneficiaries. We believe that the NPR falsely considers the collateral benefits as non-pecuniary and furthermore falsely suggests that the tiebreaker rule almost never applies because it is "very rare" that investments are ever indistinguishable. The "tiebreaker rule" has been widely accepted since 1994 under ERISA guidance. The NPR is now intending to increase the burden on plan sponsors to document that investments are indistinguishable so that collateral benefits can then be considered. We, therefore, urge you to allow the existing guidance to remain in effect and not move forward with a final rule.

Also, despite the aim of providing clarity for ERISA fiduciaries, the Proposal creates confusion. This appears to be, in part, because of a failure to distinguish environmental,

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social and governance ("ESG") integration and ETIs. ESG integration is the consideration of ESG factors as part of prudent risk management and a strategy to take investment actions aimed at responding to those risks. ETIs are investments that aim to provide competitive financial returns as well as collateral benefits.

Pecuniary Factors.

The Department's focus on the pecuniary factors and the interests of the plan, its participants, and beneficiaries is appropriate. However, as currently constructed, the Department fails to distinguish between the different types of defined benefit pension plans and how pecuniary factors might differ between different types of ERISA plans. Specifically, multiemployer defined benefit pension plans are considerably different from single employer defined benefit pension plans.

These differences include the source and nature of the plan contributions, the pecuniary impact of contributions on the plan, its participants, and beneficiaries, as well as the ability of the plan to make investments that advance, promote and support the pecuniary interests of the plan, its participants, and beneficiaries through contributions.

Unlike single employer plans, multiemployer plans have a significant track record in being able to make investments that earn competitive risk adjusted returns, and directly put plan participants to work that, in turn, generates new contributions to the plan. All of which is consistent with (1) trustees acting "solely in the interests of the participants and beneficiaries" and the "exclusive purpose" requirement of "providing benefits", and (2) the prohibited transaction provision of 29 USC §1106.

Multiemployer pension plans receive plan contributions principally based on the hours worked of an individual worker and participant. Therefore, if an investment puts a participant to work, the plan receives contributions that it would not have otherwise had, the participant earns a pension benefit, and the plan receives contributions that are either first used to pay the benefits of current retirees, or being used to reduce the unfunded accrued liabilities of the plan.

The "all else being equal" test.

NRIPP is concerned that the NPR creates new burdens for fiduciaries using the "all else being equal test" that would lead to unnecessary costs for plan participants. It also creates confusion about what activities the DOL is attempting to regulate.

Under the "all else being equal test," which has been in place since 1994, fiduciaries may select an investment that provides collateral benefits only after they have determined that the risk and return profile of that investment option is substantially similar to that of competing options that would meet the financial needs of the fund just as well.

The Proposal raises questions about whether fiduciaries would, in reality, ever have the opportunity to select between multiple investment options. It proposes the retention of the "all things being equal" test but adds new recordkeeping requirements for fiduciaries to document their analysis that multiple options were equal and that it was, therefore, appropriate to make a decision based on collateral benefits.

The Proposal's discussion of the all things being equal test is cause for confusion because, while the test was originally developed to guide the consideration of ETIs and the discussion in the Proposal appears to envision the selection of an ETI investment, the language of the Proposal does not distinguish the application of this test from the broader discussion of ESG integration.

NRIPP's Successful Track Record Investing in ETIs.

The NRIPP has been successfully investing in ETIs since 1979 with our initial investment into ULLICO's J for Jobs Fund on June 1, 1979. J for Jobs is a diversified construction and permanent loan fund that has produced a gross annualized return since inception through March 31, 2020 of 6.81% and a net annualized return over the same period of 6.30%. Over the same period, J's benchmark, the Bloomberg Barclays Aggregate Bond Index produced a return of 7.37%.

The NRIPP has also invested in the AFL-CIO Building Investment Trust ("BIT"), a core open-end private real estate fund, since October 1, 1990. Since the NRIPP's initial investment into the BIT through March 31, 2020, the BIT has generated an annualized gross and net return of 7.50% and 6.44%, respectively. Over the same time-period, the BIT's benchmark, the NCREIF Fund Index – Open End Diversified Core Equity ("NFI-ODCE") has generated an annualized gross and net return of 7.27% and 6.26%, respectively.

Finally, our most recent ETI investment in ULLICO's Infrastructure Fund began on September 22, 2016 and produced an annualized gross and net of fee return through March 31, 2020 of 9.89% and 8.03% respectively. Over the same period, the benchmark return of CPI + 5% annualized provided a return of 6.88%.

Conclusion.

The Proposal mischaracterizes the collateral benefits of ETIs and fails to distinguish between ESG integration and economically targeted investing. This will likely lead to confusion for ERISA fiduciaries and lead to an increase in costs to plan participants. If the Proposal is finalized in its current form, we are concerned that fiduciaries, like us, will struggle to fulfil their obligations to integrate all financially material risk factors while also trying to respond to the language in the Proposal that appears aimed at preventing fiduciaries from taking account of these same risks.

As institutional investors, we have a duty to act in the best long-term interests of our beneficiaries. In this fiduciary role, we believe that ETI collateral benefits may be financially material and integrating them is core to investment decision-making. If the Proposal goes into effect, it will undermine our ability to act in the long-term best interest of our beneficiaries. As such, we urge you to allow the existing guidance to remain in effect and not move forward with the adoption of the final rule.

Thank you for your consideration.

Sincerely,

Kinsey Robinson
Chairman, Board of Trustees, NRIPP